

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BRADY HEFFLEFINGER,	:	CIVIL ACTION NO. 1:08-CV-1125
	:	
Plaintiff	:	(Judge Conner)
	:	
v.	:	
	:	
SUPERPETZ, LLC, WEIS MARKETS, INC., BOB DAVIS, SCOTT KIRMES, CHRIS SHAFER, and CAROL KESSLER,	:	
	:	
Defendants	:	
	:	

ORDER

AND NOW, this 16th day of October, 2008, upon consideration of the report of the magistrate judge (Doc. 13), to which no objections were filed, recommending that the motion to dismiss (Doc. 4), filed by defendants Superpetz, LLC and Weis Markets, be granted, and following an independent review of the record, it appearing that a prima facie claim under the Family and Medical Leave Act (“FMLA”) requires plaintiff to allege the existence of a serious health condition, see 29 U.S.C. § 2912(a)(1)(D), that plaintiff attempted to exercise his FMLA right to medical leave as a result of this serious health condition, see 29 U.S.C. § 2912(a)(1), and that defendants discharged plaintiff for exercising his right or retaliated against plaintiff for exercising his right, see 29 U.S.C. § 2615(a)(1)-(2), and that plaintiff did not allege the existence of a serious health condition, the existence of an adverse employment action causally connected to the exercise of FMLA rights, or the denial by defendants of FMLA leave, and the court concluding that plaintiff has therefore

failed to adequately plead a prima facie case, it is hereby ORDERED that:

1. The report and recommendation of the magistrate judge (Doc. 13) is ADOPTED.
2. Defendants Superpetz LLC and Weis Markets' motion to dismiss (Doc. 4) is GRANTED and Count VII of plaintiff's complaint (Doc. 1) is DISMISSED.
3. The above-captioned case is REMANDED to the magistrate judge for further proceedings.¹

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge

¹ On October 16, 2008, plaintiff filed a motion (Doc. 14) seeking leave to amend his complaint. Plaintiff's motion is remanded to the magistrate judge for further proceedings.